THE

Supreme Court of the United States

OCTOBER TERM, 1943.

No. .....

JENNINGS A. SNIDER, *Petitioner,*

v.

VIDA RUTH KELLY, THE NATIONAL BANK OF WASHINGTON, EXECUTOR OF THE ESTATE OF JAMES MERRILL KINSELL, DECEASED, RUTH KELLY, MARY JANE KELLY, HILDA F. KELLY AND VIDA CLYDE KELLY, *Respondents.*

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI.

I.

THE OPINION OF THE COURT BELOW.

The opinion of the United States Court of Appeals for the District of Columbia (R. 43) is reported in

II.

JURISDICTION.

1. The opinion of the United States Court of Appeals for the District of Columbia is dated April 26, 1943 (R. 43),

and a petition for re-hearing was filed on May 8, 1943, which said petition was denied May 29, 1943 (R. 45).

2. The United States Court of Appeals for the District of Columbia, in sustaining the judgment of the District Court of the United States for the District of Columbia, by its ruling, ignored its own decisions and applicable decisions of this Court.

3. The United States Court of Appeals for the District of Columbia failed to give a proper interpretation to the Act of Congress enacted March 3, 1901, being 31 Stat. 1368, Chapt. 854, and further known as Title 12, Section 401 of the 1940 Code of the District of Columbia and 1120 of the Code of the District of Columbia amended to June 7, 1924.

4. The jurisdiction of this Court is invoked under the provisions of Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

III.

STATEMENT OF THE CASE.

A full statement of the case has been given under the heading "STATEMENT OF THE CASE" in the Petition, and, in the interest of brevity, the statement is not to be repeated at this point.

IV.

SPECIFICATION OF ERRORS.

1. The United States Court of Appeals for the District of Columbia erred in holding that the conveyance by the respondent Vida Ruth Kelly was not made for the purpose of hindering, delaying and defrauding your petitioner, in accordance with Title 12, Section 401 of the District of Columbia Code of 1940, further known as Section 1120 of the Code of the District of Columbia amended to June 7, 1924, and further known as the Act of March 3, 1901, 31 Stat. 1368, Chapter 854.

2. The United States Court of Appeals for the District of Columbia erred in sustaining the action of the United States District Court for the District of Columbia in dismissing the bill of complaint.

3. The United States Court of Appeals for the District of Columbia, in interpreting the aforesaid Act of Congress, erred in failing to give consideration to the decisions of the United States Court of Appeals for the District of Columbia, and this Court, prior to and subsequent to the passage of the Act by Congress.

V.

ARGUMENT.

The United States Court of Appeals for the District of Columbia erred in holding that the conveyance by the respondent Vida Ruth Kelly was not made for the purpose of hindering, delaying and defrauding your petitioner, in accordance with Title 12, Section 401 of the District of Columbia Code of 1940, further known as Section 1120 of the Code of the District of Columbia amended June 7, 1924, and further known as the Act of March 3, 1901, 31 Stat. 1368, Chapter 854.

The record conclusively shows that your petitioner obtained a judgment against respondent Vida Ruth Kelly, on which said judgment execution was issued, and which said execution was returned unsatisfied, and that pending the disposition of that suit the respondent Vida Ruth Kelly, without consideration, transferred to her brother her interest in the property located at 1608 17th Street, N. W., Washington, D. C., and that the present suit is for the purpose of setting aside this conveyance (R. 2-5).

The matter of fraudulent conveyances is partially covered by the Act of Congress enacted March 3, 1901, 31 Stat. 1368, Chapt. 854, further known as Title 12, Section 401 of the 1940 Code of laws for the District of Columbia, and

Section 1120 of the District of Columbia Code amended to 1924, which is as follows:

> "Every conveyance or assignment, in writing or otherwise, of any estate or interest in lands or rents and profits issuing from the same, or in goods or things in action, and every charge upon the same, and every bond or other evidence of debt given, or judgment or decree suffered, with the intent to hinder, delay, or defraud creditors or other persons having just claims or demands of their lawful suits, damages, or demands, shall be void as against the persons so hindered, delayed, or defrauded: Provided, That nothing herein shall be construed to affect or impair the title of a purchaser for a valuable consideration, unless it shall appear that such purchaser had previous notice of the fraudulent intent of his immediate grantor, or of the fraud rendering void the title of such grantor: Provided further, That the question of fraudulent intent shall be deemed a question of fact and not of law. (Mar. 3, 1901, 31 Stat. 1368, ch. 854, § 1120."

This Section of the Code is referred to in a number of cases as Section 1120, which refers to the Code of Laws for the District of Columbia, Amended to June 7, 1924, and this Section was interpreted in a number of cases and it has definitely been decided that it is not necessary for the plaintiff in such a cause to prove actual fraud on the part of the defendant before a conveyance will be set aside.

In *Barber* v. *Wilds*, 33 App. D. C., Page 155, the Court said:

> "The cause having been heard on bill and answers all averments of fact in the answers, so far as they are consistent with the documentary evidence in the cause, must be taken as true; but it by no means follows that, because the defendants have denied any attempt to hinder, delay, or defraud the creditors of Barber, the court is precluded from finding such intent from the facts and circumstances surrounding the transactions of the parties denying such intent.
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> Section 1120 of the Code (31 Stat. at L. 1368, chap. 854) provides 'that the question of fraudulent intent

shall be deemed a question of fact, and not of law.' In Means v. Dowd, 128 U. S. 273, 32 L. ed. 429, 9 Sup. Ct. Rep. 65, it was held that a similar statute in Indiana 'had not changed the law on the subject, and that the court must, in the first instance, determine upon the legal effect of the written instrument, and, if that be to delay creditors, it must be rejected.'

In construing a similar statute the court, in Thomson v. Crane, 73 Fed. 327, said: 'A voluntary deed is fraudulent by operation of law where the facts and circumstances clearly show that (the rights of) existing creditors are thereby prejudiced, without regard to whether there was any actual or moral fraud in the conveyance.'

To the same effect are: 20 Cyc. Law & Proc. p. 463; Farrow v. Hayes, 51 Md. 505; Hathaway v. Brown, 18 Minn. 414, Gil. 373; Smith v. Conkwright, 28 Minn. 23, 8 N. W. 876; Cunningham v. Freeborn, 11 Wend. 241.

We conclude, therefore that § 1120 was not intended to change, and does not change, the rule that parties shall be held to intend the natural and probable consequencies of their acts. It follows that, if the inevitable consequences of a conveyance are to hinder, delay, or defraud creditors, the court must so hold notwithstanding the denial of such intent by the parties to such conveyance."

and in the case of *Breneman* v. *Herdman,* 35 Apps. D. C. Page 33, the Court said:

"It is next contended that the court erred in finding that Breneman made said deed of September 28th, 1895, with intent to hinder, delay, or defraud his creditors. This assignment is easily disposed of. The record conclusively shows that at the time he made this conveyance he was harassed by creditors, and that the only property he had in the world was the interest which he conveyed to his sister. It will appear, in the consideration of the next assignment of error, that said conveyance was made upon little or no consideration, although purporting to have been made upon a fairly adequate consideration. It is apparent, therefore, that he was not in good faith preferring one creditor over other, as he would have had the right to do. Merillat

v. Hensey, 32 App. D. C. 64. But, on the contrary, the inevitable consequences flowing from his acts were to hinder, delay, or defraud his creditors, within the meaning of sec. 1120 of the Code (31 Stat. at L. 1368, chap. 854). Barber v. Wilds, 33 App. D. C. 150."

It must certainly follow that there could be no clearer case than the instant case where the inevitable consequences of a conveyance of property would be to hinder, delay or defraud a creditor.

In the case of *Parish* v. *Murfree,* 13 Howard, 92, the Court said:

> "Where a voluntary conveyance is made by an individual free from debt, with a purpose of committing a fraud on future creditors, it is void under the Statute. And if a settlement be made, without any fraudulent intent, yet if the amount thus conveyed impaired the means of the grantor so as to hinder or delay his creditors, it is as to them void."

In the case of *Adair* v. *Shallenberger,* 119 Fed. (2nd) 1017, the Court, at Page 1020, said:

> " 'Where there is a general denial of fraud or ownership by witnesses, such denial is of little effect, if the facts and circumstances narrated by the witnesses disclose the contrary. For example, if a man swears that he had no intent to defraud his creditors by a conveyance, but the facts testified to by him show that the conveyance was a voluntary conveyance to his wife without consideration, while he was insolvent, or largely indebted, or on the eve of insolvency, such facts so testified to by him will stamp the conveyance as fraudulent, even though he may have had no actual intention to defraud.' "

In *Matthews* v. *Thompson,* 186 Mass. 14, 71 N. E. 93, the Court said:

> "We have been referred to no case in which it is held that such a conveyance is valid against creditors. It is generally, if not universally, held that freedom from moral turpitude, and an innocent and honest in-

> tention to accomplish a good object in the disposition of the property, are not enough to relieve a transaction of this kind from its fraudulent character, in reference to its effect upon the legal rights of creditors."

and again in the same case, the Court said:

> "Again, if at the date of the conveyance the person making it was not in a position actually to pay his creditors, the law would infer that he intended by making the voluntary conveyance to defeat and delay them."

and in the same case, in reference to the opinion of Chief Justice Campbell in *Fellows* v. *Smith*, 40 Mich, 689, it was said:

> " 'Upon the whole case, while we do not think any fraud was intended, yet we think the conveyance is shown to have been without any legal consideration and voluntary.' In Crawford v. Kirksey, 55 Ala. 282, 27 Am. Rep. 704, this language is found in the opinion: 'Such disposition is constructively fraudulent as against the existing debts of the grantor, no matter how innocent or meritorious the motive with which it was made.' "

In *Arthur* v. *Morrow Bros.*, 131 Md. 59, 101 Atl. 777, the Court said:

> "A voluntary conveyance is prima facie invalid as against existing creditors of a grantor who has no sufficient means to pay his debts, independent of that which has been conveyed, without regard to his actual intent or to that of the grantee."

and again in the same case, the Court said:

> "If the necessary effect of a voluntary conveyance is to hinder, delay or defraud creditors, the legal presumption is that it was made for that purpose, even though there was not actual intent to perpetrate a fraud."

The above cited and reported cases clearly sustain the petitioner's contention that the voluntary conveyance by

Vida Ruth Kelly of her interest in the property at 1608 17th St., N. W., without any consideration, actually hindered and delayed the collection of the judgment against her. The fact that her brother was in bad health and very shortly after this conveyance made the only will he had ever made, so far as the testimony is concerned, leaving this property, together with whatever other property he might have, to the children of Vida Ruth Kelly, indicates that there must have been some understanding covering the transfer of this property, for in the event of the death of James Merrill Kinsell, without a will, this property would have vested in Vida Ruth Kelly.

Where conveyance is without consideration, intention of debtor is not material.

The Federal cases, together with numerous well reasoned State decisions, hold that proof of a conveyance without consideration, by one who is indebted, places upon the defendant the burden of showing that at the time of the conveyance that the debtor still retained sufficient funds to pay his debts.

In the case of *Feist* v. *Druckerman*, 70 Fed. (2nd), 333 the Court said.

> "Now, there is a rule of long standing in the New York Courts that a voluntary conveyance made when the grantor is indebted is presumptively fraudulent. We think this means that, if one indebted makes such a transfer, it is presumed, in the absence of some proof to the contrary, that he was then insolvent."

The Court then referred to the case of *Cole* v. *Tyler*, 65 N. Y., 73, and quoted as follows:

> "This presumption * * * is not to be overthrown by mere evidence of good intent or generous impulses or feelings. It must be overcome by circumstances showing on their face that there could have been on bad intent such as that the gift was a reasonable provision, and that the debtor still retained sufficient means to pay

his debts. He can no more delay his creditors by such voluntary conveyance than he can actually defraud them."

In this case the respondent Vida Ruth Kelly did nothing to meet the presumption, and the proof that there was no consideration was clear.

In the case of *McKey,* v. *Roetter,* 114 Fed. (2d), 129, the Court said:

> "Firmly entrenched in our jurisprudence is the rule that the owner of property may at any time give his property to anyone he chooses, so long as he thereby injures no then existing creditors, Bittinger v. Kasten et al., 111 Ill. 260, 264. If, however, its legal effects works a fraud on the rights of a creditor, it will be deemed fraudulent, and such a creditor may impeach the transfer. Moore, Adm'r. v. Wood et al., 100 Ill. 451; Lawson v. Funk, 108 Ill. 502; Patterson v. McKinney, 97 Ill. 41.
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> But in our case counsel for the defendant insists it was incumbent upon plaintiff to prove a case of an actual intent by defendant to defraud the bankrupt's creditors, or that she knowingly participated in the fraud, and he points to the fact that she had no knowledge that her husband had any debts or that he was a defendant in the stockholders' liability suit. We find no merit in this contention.
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> In discussing a somewhat similar contention made in Lawson v. Funk, supra, the court at page 507 of 108 Ill. said: 'The authorities clearly establish two distinct grounds upon which conveyances * * * will be deemed fraudulent as against creditors: First, such as are entered into with a fraudulent intent; and second, such as, from the terms of the agreement or the nature of the transaction itself, are deemed so as a mere inference of law, without regard to the motives or actual intentions of the contracting parties. In the first class of cases the fraudulent intent is always a question of fact, to be established by extrinsic proofs. In the latter, the agreement, under the circumstances shown, is deemed fraudulent, although the parties may have acted in the best of faith. * * *. All such contracts and trans-

actions are conclusively presumed, as an inference of law, to be fraudulent, without regard to the real motives or purposes of the parties.' "

In the case of *Gardner* v. *Kirven,* 191 S. E. 814, the Court states as follows:

"Where a conveyance is made without an actual intent to defraud but without consideration, it is said that the conveyance will stand if the grantor reserves a sufficient amount of property to pay his creditors. Penney v. Reid, 166 S. E. 139.

But this means a sufficient amount of property not merely at the time of the transfer, but an amount from which, in the final analysis, the creditors are able to collect their indebtedness in full. The Court in the Reid case said:

'No rule is more clearly imbedded in the law of this state than that a creditor must be just before he is generous. The law will not permit one who is indebted at the time to give his property away, provided such gift proves judicial to the interest of existing creditors. The motive which prompts the donor to make the gift is wholly immaterial, if the donor is indebted at the time, and the event proves that it is necessary to resort to the property attempted to be conveyed away by a voluntary deed for the purpose of paying such indebtedness, the voluntary conveyance will be set aside and the property subjected to the payment of such indebtedness, upon the ground that it would otherwise operate as a legal fraud upon the rights of the creditors, even though it might be perfectly clear that the transaction was free from any case of moral fraud.' "

The foregoing cases indicate that intentional fraud is not necessary to invalidate a conveyance of real estate, and the only fact necessary to be proven is that the debtor conveyed property without consideration without retaining a sufficient amount to pay his just debts.

The United States Court of Appeals, to support its decision, refers to the case of *Lloyd* v. *Fulton,* 91 U. S. 479, (R. 44), but in that case the debtor, at the time he made the conveyance, retained two and a half times the amount of

his indebtedness, and the creditor made no move to enforce the obligation until a number of years thereafter.

The United States Court of Appeals also refers to the case of *Merillat* v. *Hensey*, 221 U. S. 333 (R. 44), which readily discloses a different set of facts, but the Court in that case, in referring to a similar statement of facts, as presented in the instant case, at Page 345, stated as follows:

> "Section 1120 of the District of Columbia Code provides that in suits to set aside transfers or assignments as made with intent to hinder, delay, or defraud creditors, 'the question of fraudulent intent shall be deemed a question of fact and not of law.'
>
> Counsel have argued, as courts have ruled, that no amount of evidence will assign to an instrument an operation which the law does not assign to it. Thus a mere deed or gift which actually deprives existing creditors of property which was subject to their claims, or a transfer of property grossly disproportioned to a debt secured under a conveyance apparently absolute, but subject to a secret agreement that the surplus should be held for the assignor, could not be saved, for the necessary legal effect would be to hinder, delay or defraud creditors, and the law could but assign to such conveyance the intent which must indubitably appear from the facts. Edgell v. Hart, 9 N. Y. 213, 217."

Any right other than that of an heir at law had by James Merrill Kinsell was barred by the Statute of Limitations.

The Court, in its opinion, (R. 44) indicates that the respondent Vida Ruth Kelly was not the owner of this property, but she had a legal right to which your petitioner was entitled, and all the facts surrounding any litigation covering that point was not in issue in this case, for the only matter presented was whether or not the conveyance was made with the intent to hinder, delay or defraud your petitioner. Surely the respondent had some interest, for it was necessary to convey it by deed.

No action of any kind had been taken by James Merrill Kinsell for the enforcement of any right that he might have had under his note or mortgage for more than thirty-four years, and any interest or right that he might have to enforce such rights was barred by the Statute of Limitations, in accordance with Title 12, Section 201 of the 1940 edition of the District of Columbia Code.

If James Merrill Kinsell had intended or desired to enforce his rights under the mortgage it would be necessary that a petition be filed for the appointment of Trustees, at which time any party interested in the property could set up the Statute of limitations.

In *Cropley* v. *Eyster,* 9 Apps. D. C., 378, the Court said:

> "In this proceeding the bar of limitation, or lapse of time, does not apply as in case of an action on the note, but to the remedy for the enforcement of an equitable right in land under the mortgage; hence the same period that would bar an ejectment is required. Peters v. Suter, 2 MacA. 516, 518; Elmendorf v. Taylor, 10 Wheat. 152, 169. However, as more than twenty years elapsed between the maturity of the note and the filing of appellant's petition, the bar is complete unless his right of action shall have been duly kept alive. Whether this has been, so as to let in the appellant's claim to right of participation in the proceeds of the foreclosure sale (a point of special importance to the interest of the second mortgage), depends upon circumstances that will be considered later."

In *Reynolds* v. *Simon Needle et als.,* 132 Fed. (2nd) 161, decided by the United States Court of Appeals for the District of Columbia, on December 14, 1942, the Court, in referring to the statute covering possession of property, stated as follows:

> "The complaint, which was filed August 28, 1941, alleges that "on the first day of March, 1925 * * * the defendants entered * * * and unlawfully ejected the plaintiff * * *." Since the cause of action arose at the time of the ejection, the complaint shows on its face that it arose more than fifteen years before suit. The

statute provides: "No action shall be brought for the recovery of lands, tenements, or hereditaments after fifteen years from the time the right to maintain such action shall have accrued * * *." Appellees were entitled to summary judgment if there was no 'genuine issue as to any material fact.' Affidavits were not required."

THE RECORD CONTAINS NO PROPER EVIDENCE TO SUSTAIN THE FINDINGS OF FACT.

All the testimony introduced by the respondents (R. 24-41) was hearsay and not one word of substantial evidence can be found in the record to substantiate the findings of fact signed by the trial Justice. And the Court acknowledged that it was hearsay and accepted it as such as will appear by the following excerpts taken from the record. The following is taken from page 25 of the record:

"Q. What did you hear your mother say with respect to this note and the property?

Mr. Doherty. I object, if your Honor please. I would say that is absolutely hearsay.

The Court. I am going to admit that, because, after all, as the Court indicated a few minutes ago, if the case were tried before a jury, the evidence would be excluded. But it is on the Equity side, without a jury, and it is to the interest of the Court to find what the facts are. There is a claim here of a note evidencing a debt between this respondent's mother and her brother."

* * * * * * * * *

"The Witness. I would not attempt to quote it. My mother assured me of this note having been given and that that would protect my brother, that the property would automatically be his. I knew that and understood it for a great many years."

On page 33 of the record is the following:

"The Court. The Court heard the witness testify, and he made statements, according to the best of his recollection, allegedly made by Ida Kinsell and by

James Kinsell. Of course that is plainly hearsay. I understand that counsel objects to that.

Mr. Doherty. That is right.

The Court. The Court understands that, and the objection is noted, and the Court will admit it for whatever light it will throw on the matter as a whole—what was said by Mrs. Kinsell to Mr. Laskey and what was said by Mr. Kinsell to Mr. Laskey—in reference to the offer of what purports to be a copy of the original note, counsel having indicated that due diligence was used to secure the original. If counsel desires to offer it in evidence, it is admitted."

In addition to being hearsay, the testimony covered collateral issues brought into the case by the respondents and permitted by the Court and these collateral findings were the basis of all the findings of fact. The only issue presented by the pleadings in the case was whether or not the respondent, Vida Ruth Kelly, had made a conveyance to hinder and delay the collection of the debt due the petitioner, Jennings A. Snider, and the Court permitted all the hearsay and collateral evidence to come in with the observation that he was sitting as a chancellor and for that reason could take the good out of such evidence and disregard any evidence which had not been properly admitted. It is submitted that a trial judge is as human as a jury and that he should not be permitted to entertain improper evidence and to say that he did or did not base his findings on improper evidence.

In the case of *Shepherd* v. *United States*, 290 U. S. 96, 54 S. Ct. 22, the Court at page 104 stated as follows:

"It used the declarations as proof of an act committed by some one else, as evidence that she was dying of poison given by her husband. This fact, if fact it was, the government was free to prove, but not by hearsay declarations. It will not do to say that the jury might accept the declarations for any light that they cast upon the existence of a vital urge, and reject them to the extent that they charged the death to some

one else. Discrimination so subtle is a feat beyond the compass of ordinary minds. The reverberating clang of those accusatory words would drown all weaker sounds. It is for ordinary minds, and not for psychoanalysts, that our rules of evidence are framed. They have their source very often in considerations of administrative convenience, of practical expediency, and not in rules of logic. When the risk of confusion is so great as to upset the balance of advantage, the evidence goes out."

In the case of *Kovacs* v. *Julia S. K. Szentes,* a case which was recently decided at the June Term of the Supreme Court of Errors of Connecticut, and which has not yet been published, the Court, in reversing the cause and ordering a new trial, stated the following:

"*Maltbie, C. J.* In this action the plaintiff sought to recover damages from the defendant, his mother-in-law, on the ground that she had alienated the affections of his wife. Little purpose would be served by stating the facts found by the trial court, or considering the assignments of error seeking corrections in the finding except in one particular we shall discuss.

While the plaintiff was testifying in his own behalf he was asked certain questions as to statements made to him by his wife not in the presence of the defendant. When the first of these questions was asked, the defendant objected and the matter was discussed at length. The trial court stated that as it was almost at the end of the term it would be unfortunate, with the witnesses present, to have evidence summarily ruled out on debatable grounds, and that counsel could look up the authorities and later be heard on a motion to strike out; and it added: 'It will produce no lasting effect on my mind, because I feel that I can readily dismiss it, if it is stricken from the record.' It admitted 'this particular question.' No exception was taken to this ruling, and the finding does not show that the question was answered, so that in itself the admission of this question presents nothing for our consideration. Reference is made to it only because of its possible bearing upon later rulings of the court. Other similar ques-

tions were thereafter asked, but no motion to strike out any evidence of this nature was made. To the admission of a number of the later questions, no exception appears to have been taken, and in other instances the finding does not show that they were answered, and these, too, we disregard. Others of the questions were admissible; in a suit for alienation of affections, the state of mind of a spouse whose affections are alleged to have been alienated may be material to show the loss of affection which is the gist of the action and to show the effect, in producing that loss, of the claimed words or acts of the defendant; and statements made out of court by him or her relevant to such an inquiry are admissible on that ground, not to prove the truth of any facts included in them. Moir v. Moir, 181 Iowa, 1005, 1008, 165 N. W. 221; Pugsley v. Smyth, 98 Ore. 448, 460, 194 Pac. 686; Cripe v. Cripe, 170 Cal. 91, 93, 148 Pac. 520; 6 Wigmore, Evidence (3 Ed.), 1730; and see Vivian's Appeal, 74 Conn. 257, 261, 50 Atl. 797; Home Banking & Realty Co. v. Baum, 85 Conn. 383, 388, 82 Atl. 970. In one instance, however, the plaintiff testified, over objection and exception, that his wife stated to him that her mother said she would disown her if she returned to him. This question was clearly not admissible within the principle to which we have referred; its effect would be to prove a fact and not to show the mental condition of the plaintiff's wife. Vivian's Appeal, supra. If the basis of the trial court's ruling admitting this question was that stated when the first of this series of questions was asked, this does not obviate the error. A judge has not such control over his mental faculties that he can definitely determine whether or not inadmissible evidence he has heard will affect his mind in making his decision. * * *"

This question was presented to the United States Court of Appeals in the original brief, argument and again on a motion for rehearing but the Court has made no finding or returned any opinion upon this particular point, and it is a point upon which this Court should grant a writ of certiorari in order to render a proper decision in this case and that your petitioner might have his day in Court upon evidence allowed under the ordinary rules of evidence.

CONCLUSION.

It is respectfully submitted that your petitioner, by the record, has made out a clear case that the respondent Vida Ruth Kelly made a conveyance of her interest in all her property to her brother, without any consideration, while indebted to your petitioner, and that she failed to retain sufficient assets with which to pay her obligation to your petitioner, and further it was done under such circumstances which clearly indicated her intent to hinder, delay and defraud your petitioner.

The cases submitted herewith clearly indicate that prior to and subsequent to the passage of the Act of Congress referred to, it was and is the general law, both in this jurisdiction and elsewhere, that where a debtor conveys property, without consideration, without, retaining sufficient funds with which to pay his creditors, that such conveyance is void, regardless of his intent, for the necessary legal effect of such an act would be to hinder, delay or defraud creditors, and the law could but assign to such conveyance the intent which must indubitably appear from the facts.

It is, therefore, respectfully submitted that the United States Court of Appeals for the District of Columbia, has failed to give proper effect to, and its decision in this case is in conflict with, the applicable decisions of its own Court, of this Court, and of the various United States Circuit Courts of Appeals, and the decisions of the higher Courts of the various States, a number of which cases are set forth in this petition, and its decision does not tend to a uniform interpretation of the Act of Congress in question, and that this case is one calling for the exercise by this Court of its supervisory powers, in order that your petitioner may receive a fair and impartial decision and that to such an end of a writ of certiorari should be granted and this Court should review the decision of the United States Court of Appeals for the District of Columbia and finally reverse it.

CORNELIUS H. DOHERTY,
Counsel for Petitioner.